

SCHIFF HARDIN LLP
KAROL DENNISTON (Bar No. 141667)
Jeffrey D. Eaton (Bar No. 272717)
One Market, Spear Street Tower
Thirty-Second Floor
San Francisco, CA 94105
Tel: (415) 901-8700
Fax: (415) 901-8701

Attorneys for Ad Hoc Taxpayers Working Group

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re
CITY OF STOCKTON, CALIFORNIA,
Debtor.

Case No. 12-32118

Chapter Number: 9

**AD HOC TAXPAYERS WORKING
GROUP'S SUBMISSION OF REPLY
TO CITY'S RESPONSE TO
REQUEST TO APPOINT AN
OFFICIAL TAXPAYER
COMMITTEE**

No hearing required.

The Ad Hoc Taxpayers Working Group (the "Working Group"), by and through their undersigned attorneys, hereby submits their reply to the City of Stockton, California's (the "Debtor") response to the Working Group's request that the U.S. Trustee appoint an official taxpayers committee in the above-captioned case.

Dated: July 8, 2013

/s/ Jeffrey D. Eaton
Karol K. Denniston (141667)
Jeffrey D. Eaton (272717)
One Market, Spear Street Tower
Thirty-Second Floor
San Francisco, CA 94105
Tel: (415) 901-8700
Fax: (415) 901-8701



Karol K. Denniston
415-901-8602
kdenniston@schiffhardin.com

ONE MARKET
SPEAR STREET TOWER
THIRTY-SECOND FLOOR
SAN FRANCISCO, CA 94105
t 415.901.8700
f 415.901.8701
www.schiffhardin.com

July 8, 2013

VIA U.S. MAIL AND EMAIL

Antonia.darling@usdoj.gov

Antonia Darling
Assistant U.S. Trustee
United States Department of Justice
501 "I" Street, Suite 7-500
Sacramento, California 95814

Re: In re City of Stockton, California ("Debtor" or "City"), United States
Bankruptcy Court, Eastern District of California, Sacramento Division, Case No.
12-32118

Dear Ms. Darling:

As you know, Schiff Hardin LLP represents the ad hoc working group of Stockton taxpayers ("Working Group"), formed after the conclusion of the eligibility process. We write to formally respond to the Debtor's July 1, 2013 Letter opposing Official Committee status for the Working Group.

I. Working Group is not Seeking to Substitute its Judgment for that of the City's Duly Elected Officials

Nothing in the various pleadings filed, nor in the initial letter sent to you indicated that the Working Group is in any way attempting to substitute the Working Group's judgment for that of the duly elected City officials. In fact, the Working Group is seeking to work cooperatively alongside City officials to ensure that adequate information is available for all of the City's taxpayers to review the City's plan of adjustment and make a decision on the tax increase that is premised on sufficient information that every voter in this situation would want to know. At a minimum this includes basic information regarding how the tax increase works with and fits into the plan of adjustment and how the voters can make sure additional police officers are hired and retained. The City, thus far, as evidenced by the most recent City Council meeting, has failed to provide information that completely and accurately describes its plan of adjustment. Indeed it cannot as it has not gone through the disclosure process required by 11



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U.S.C. § 1125. Moreover, the City has provided no way for the voters to enforce a commitment to place a specific number of police officers on the street and keep them there.

The Debtor confuses a political process of representation of the residents and taxpayers of the City with a much more simple representation of a group of similarly situated parties in a bankruptcy. The Debtor's contention that the mere formation of a taxpayer committee would be an attempt to usurp the role of City officials is simply not accurate. The formation of the Official Committee of Retirees in this case did not upset the City Council's ability to govern the City, just as the formation of an Official Committee of Taxpayers would not upset the City Charter's carefully crafted template for governance of the City.

The Debtor also asserts that the Working Group does not actually represent the interests of all taxpayers of the City. It is a well settled principle of bankruptcy law that a few members of a larger constituency can be appointed to represent the interests of the larger group, and these appointed representatives have a fiduciary duty to put the interest of that group first. See In re Pierce, 237 B.R. 748, 758 (Bankr. E.D. Cal. 1999); In re Leap Wireless Intern., Inc., 295 B.R. 135, 140 (Bankr. S.D. Cal. 2003). The Debtor seems to be saying that the only way the Working Group could represent the taxpayers of Stockton if each and every taxpayer in the City were a part of the group. Thankfully, the Bankruptcy Code presents all parties with a better alternative – through official committee status. Notwithstanding the established law on committee formation, as the attached op/ed piece published in the Stockton Record illustrates¹ the Working Group is an open group and continues to seek and receive support and participation from both individuals and taxpayers in the community.²

The Debtor has publicly stated that a tax increase is necessary to fund its “bankruptcy exit” and hire additional police officers. Taxpayers in and outside of this Working Group have voiced strong opposition to any tax increase which does not adequately provide for an enforceable commitment to hire and retain police officers.³ The need for funding for the Debtor's plan of adjustment is a black hole as no plan of adjustment or disclosure statement has been filed.

¹ See July 7, 2013 Op – Ed written by the Working Group, attached as Exhibit A

² A July 8, 2013 editorial written and published by the Stockton Record, attached as Exhibit B, asks why the Working Group is only now seeking a seat at the table in the Debtor's bankruptcy. Quite simply, there was nothing to be done until the Debtor became eligible. Direct taxpayer involvement was not necessary until the proposed tax increase was linked to the Debtor's “bankruptcy exit” without providing any information about a plan of adjustment.

³ Annotated Agenda City Council Meeting of June 25, 2013, http://stockton.granicus.com/GeneratedAgendaViewer.php?view_id=48&clip_id=4553 (last visited July 3, 2013, 6:16 PM). The City Council Agenda is attached as Exhibit B.



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The Debtor is correct – the City Council and Mayor are responsible for the governance of the City. Indeed, given there was no City Council meeting between our submission to you and the Debtor's response, we are hard pressed to understand how well the City's government is actually functioning and would be interested to know how much, if any input, they with regard to the substance of the Debtor's response. It is the Working Group's understanding that a number of city council members did not receive or review the City's response before it was sent to you.

California law provides that the voting residents and taxpayers of the City with the power to decide if the City's proposed tax increase shall come to pass. Without additional information about the Debtor's plan of adjustment taxpayers will have inadequate information to vote on this tax increase thus potentially and unnecessarily jeopardizing the City's very expensive restructuring process further. The taxpayers are generally aware that the City's restructuring costs now exceed \$15 million.

II. The Working Group Request for Official Committee Status is Appropriate

A. Taxpayers are or Should be Considered Creditors in Chapter 9

The Debtor contends that the Working Group are parties-in-interest in the case, but they are not creditors and therefore are not entitled to official committee status pursuant to Section 1102 of the Bankruptcy Code. While acknowledging the lack of precedent on this issue, the Working Group holds the position that the taxpayers of a debtor under Chapter 9 are the functional equivalent of creditors.

The Debtor's approach is too narrow for the specialized purpose of a Chapter 9 bankruptcy case. Taxpayers enter into a social contract with a municipality. In exchange for hard earned tax dollars, the municipality is required to provide a certain level of health, safety and welfare services. In fact, a municipality's police power is founded on the duty of the state to protect its citizens and provide for the safety, good order, and well being of society." McKay Jewelers, Inc. v. Bowron, 19 Cal.2d 595, 599 (Cal. 1942). The City, in acknowledging the need for additional police officers has acknowledged its breach of the social contract as the taxpayers are currently being deprived of an acceptable level of police service.

Outside of a bankruptcy, all taxpayers have the right to seek equitable remedies against a city pursuant to Section 526(a) of the California Civil Code to prevent the illegal or wasteful spending of a municipal government. California has indicated through clear and unambiguous statutory text that its citizens will have a claim against a municipality in order to



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“obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds or other property of a county, town, city” West Ann. Cal.C.C.P. § 526(a).

B. Taxpayers Should be Considered Equity Security Holders of a Municipality

Taxpayers have a strong interest in, if not a right, to an official committee in order to efficiently and effectively participate in the restructuring of their municipality. Each taxpayer is a creditor of the City. Alternatively, if taxpayers are not considered actual creditors of the case, they are Chapter 9’s version of equity security holders. In a corporate bankruptcy, equity security holders are the residual beneficiaries of the company, they elect directors and officers of the company, they have the right to control the direction of the company, and they make direct financial contributions to the company through capital calls. In a municipal bankruptcy, taxpayers are the equity security holders as they are the residual beneficiaries of the municipality, they elect City officials and control the direction of the municipality, and are asked to make capital contributions through various taxes.

(C) In re Pacific Gas & Electric Company is Distinguishable

The Debtor’s reliance on In re Pacific Gas & Electric Company is fatally flawed. Pacific Gas was a Chapter 11 case where a group of ratepayers formed a committee. Ratepayers have no right to vote on or accept or decline a rate increase. The issues of the restructuring of a utility company are not the same challenges faced in the restructuring of a municipality through Chapter 9.

Unlike the ratepayers in the Pacific Gas case, the taxpayers of the Debtor are directly responsible for voting to approve or disapprove a tax increase. While the ratepayers were parties-in-interest, they had no power to prevent a plan of reorganization from going forward. Taxpayers have the ability to prevent any plan of adjustment calling for a tax increase from going forward. They can vote “no” bringing the entire process to a standstill – a result that the Working Group and the City should be able to agree is not optimal. Taxpayers of the Debtor are parties-in-interest and stand in the same shoes as both creditors and equity security holders.

III. Committee Composition

The Working Group is disturbed about the Debtor's willingness to personally attack experienced long-term residents who, regardless of political experience as elected officials or otherwise, are taxpaying residents. The real issue here is that the members that have triggered the complaints are members who understand the issues as a result of their various experience and can ask the hard questions regarding what is the tax really be used for and how much money does Stockton need to get out bankruptcy? Attacking taxpaying residents and asserting their



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ability to serve on an official committee because of prior or attempted service in the community is nothing more than an ad hominem attack designed to intimidate and should be viewed as just that. It is unfortunate that the Debtor did not stop the personal attacks with the letter to you. As the article in the Stockton Record (See Exhibit D) shows, the Debtor's unwarranted personal attacks extend to pretty much everyone involved in the Working Group and appear to be little more than an attempt to intimidate the Working Group. The strategy is highly questionable given that the Debtor needs taxpayers to support and vote for the tax increase. Its resistance and personal attacks illustrate the need for an official committee that can provide a check and balance by having a seat at the table and access to information that will answer the questions being raised about the tax increase and the plan of adjustment.

IV. The Debtor's Pre-Solicitation of its Plan of Adjustment has Made it Necessary to Appoint an Official Taxpayer Committee

One of the most important reasons for taxpayer involvement and the main force behind the decision of the Working Group to step forward and seek official committee status is due to the fact that the Debtor is seeking authority to put a ¾ cent sales tax increase on the ballot. According to the City Manager, this tax increase will be used to fund a plan of adjustment that no taxpayer has seen. The City Manager disclosed, at the most recent City Council meeting, that the City is seeking a general tax and there is no way for a taxpayer to enforce any proposal regarding the use of tax proceeds. This means taxpayers have no information as to how much is needed for the so called "bankruptcy exit" or whether the "bankruptcy exit" under consideration is feasible meaning that the City can actually afford it and cash flow under its terms. Nor do the taxpayers have any commitment from the City to hire and maintain a specific number of police officers.

The Debtor's City Council met on June 25, 2013, to discuss the need for a voter approved tax increase to fund the Debtor's bankruptcy exit.⁴ The Legislation Text states, among other thing:

This report presents a recommendation to place a tax measure before the voters on November 5, 2013. Its purpose is two-fold. First, it will provide the necessary general fund resources to fund the City's comprehensive Marshall Plan on Crime. **Second, it will provide the necessary resources to put the general fund back into a solvent position and fund the City's bankruptcy plan.**

⁴ Attached to the City Council Agenda for the June 25, 2013 meeting was a document identified as "City of Stockton, Legislation Text, Funding Proposal for Stockton's Marshall Plan on Crime and Recovery from Bankruptcy ("Legislation Text"). The Legislation Text is attached as Exhibit C.



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The Legislation Text, page 1 (emphasis added). The Legislation Text further stated:

Moreover, even with all the restructuring savings the City is seeking and can obtain only under Chapter 9 the general fund will fall an average of \$11 million short each year from being balanced just at its current level of inadequate public services.

Id.

If the Debtor had filed a disclosure statement that had been vetted by the Bankruptcy Court, along with a proposed plan of adjustment, the need for a committee would be based on those documents. The immediate need for an official committee is driven in large part because the Debtor is soliciting support for its proposed tax increase, which it admits is a necessary and integral part of its unfiled plan of adjustment. There is no way for any taxpayer to make a reasonable assessment of the level of services to be provided for the Debtor by the plan of adjustment, yet the taxpayers are being asked to support the tax increase being used to fund this plan of adjustment. Solicitation of support for a plan of adjustment prior to the approval of a disclosure statement is improper. In re California Fidelity, Inc., 198 B.R. 567, 571-72 (9th Cir. BAP 1996); 11 U.S.C. § 1125(b). There is little to no difference between the City soliciting an actual vote from a creditor on their as yet to-be-filed plan of adjustment, and asking the taxpayers to approve a tax necessary to fund the same unfiled plan of adjustment. Even partial solicitation, as is the case here, should not be tolerated.

In short, it is the Debtor's failure and refusal to provide adequate and necessary information to the taxpayers as it engages in what is best labeled a "partial" plan solicitation. Under any analysis, the taxpayers of Stockton are entitled to a reasonable amount of information as to how the tax revenue will be used and an enforceable commitment to additional police officers. The Debtor's efforts to denigrate and obliterate the Working Group's request for official status is ham fisted and wrongheaded and we hope that you will not be swayed by the assertion that either the Working Group or an official committee are in any way attempting to interfere with, replace, or supersede the City government.⁵ It is just the opposite, the Working Group seeks official status because the debtor's plan that provides for its proposed "bankruptcy exit" requires a tax increase. The taxpayers are entitled to information that any reasonable taxpayer would want to know in considering how to vote. "What is this money going to be used for? And how do I verify the proposed use and protect and enforce the proposed use of funds

⁵ Scott Smith, *Taxpayers Group Wants in on Talks*, STOCKTON RECORD (July 3, 2013, 6:10 PM), http://www.recordnet.com/apps/pbcs.dll/article?AID=/20130702/A_NEWS/307020322. A copy of the July 2, 2013 article is attached as Exhibit D.



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after the fact?" It is what the taxpayers do not know and the need for open and honest communication driving this process.

We appreciate your consideration and are available at your convenience to discuss our request and provide additional information.

Best regards,

A handwritten signature in blue ink that reads 'Karol K. Denniston'.

Karol K. Denniston

KKD:cs

Attachments

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SF320716556.3

The Record Editorial, 7-7-13

Committee could be independent voice in Stockton bankruptcy proceedings

During last week's Stockton City Council meeting where plans to max out the local sales tax were first publicly discussed, the mayor and several council members welcomed taxpayer participation in the bankruptcy process and recognized that voter approval of the proposed tax increase was essential to its success. This week, the city manager and his attorney slammed the door in our faces when we asked for an official, meaningful role in restoring our city's financial health and essential services.

Their extreme language and personal attacks contained in court filings and newspaper stories make us wonder what they are trying to hide from taxpayers. Instead of building the public confidence needed to pass a tax increase through transparency and consensus building, the bullying reminds voters why they do not trust politicians with their money. Indeed, why did they start out on the divisive low road?

We are five concerned Stockton business owners who have formed a committee to officially participate in the city's federal bankruptcy proceedings as an independent representative of the community, free from the conflicts of interest inherently created by city retirement benefits and focused exclusively on the values of those who pay, instead of spend, our tax dollars. As longtime residents and business owners, we will be living with the results of the bankruptcy decades after others have left us behind for new offices and greener pastures.

To fulfill that independent role, our committee wants to bring in experts to closely examine the city's post-bankruptcy plan for services to make sure our basic needs for public safety, infrastructure and economic development are met for years to come. As part of the settlement negotiations, the independent committee would ensure that any new revenue included in the bankruptcy plan is dedicated to maintaining our most vital services, a common refrain heard at the City Council meeting. Unfortunately, the city is withholding information on these important questions, but the push for new taxes without strong accountability marches on.

During our fiscal recovery, taxpayers would be well served by clear, enforceable police staffing levels and fiscally responsible budget reforms that will keep our community safe and prevent us from relapsing into insolvency. The failure of Vallejo's expensive and disruptive bankruptcy is a cautionary tale for those seeking easy solutions to devastated municipal finances.

After less than two years outside of bankruptcy, Vallejo's structural budget deficit has reappeared, squandering millions in legal fees and new taxes on an embarrassing trip back to financial square one.

Stockton must do better. Strict controls could be included in a charter amendment that would be placed on the same ballot as the tax increase. While approving a tax increase tied to increased public safety spending requires a two-thirds vote, the same taxpayer protections can be achieved through a charter amendment controlling the entire budget that only requires a majority vote.

Last year, the city sponsored a survey that showed 60 to 70 percent of city voters would support a range of tax increase options if they were tied to a bankruptcy plan that rebuilt vital services cut in recent years, including public safety. The same survey showed that only 21 percent of voters would support a tax increase not tied to restoring vital services.

To address this hard-earned distrust of Stockton leaders, city officials are proposing an advisory measure for the tax increase ballot admittedly designed with no teeth. While some see this as a cynical scheme to fool inattentive voters, we oppose this "trust us" approach because history shows it will not work. Stockton is in dire financial straits because its unconstrained leaders made foolish assumptions and bad decisions with our tax dollars, so enforceable, voterimposed limits must be part of both the financial recovery plan and the long path to regaining public trust.

Our committee supports a fair combination of revenue and fiscal controls, but as of now, all we know is the secret bankruptcy spending plan is scheduled to be released at the same time as the city's mail-in ballots, too late to ask meaningful questions and negotiate any responsible changes. Without enforceable spending

controls, the city's \$30 million blank check ballot strategy is doomed to failure. Stockton must do it right the first time.

We have faith that the City Council will make the right decision and promptly direct their employees to support an official taxpayer committee in the bankruptcy process. Effective leadership in difficult times like these requires open communications, rigorous negotiations and consensus building. An official taxpayers' committee can be a strong supporter of those important values or a strong opponent of their neglect.

Our committee welcomes the participation of all Stockton taxpayers as we learn more about fixing our city's finances and securing a better future. Citizens interested in joining our efforts should contact our legal counsel at KDenniston@ [schiffhardin.com](mailto:KDenniston@schiffhardin.com).

James DiSerio Robert French Dale Fritchen Dave Renison Larry M. Solari

Stockton Taxpayers Committee

editorials

Opposite sides of the table

Former Stockton city councilman wants to participate in city's bankruptcy

A little more than one year into Stockton's bankruptcy process, a "citizen's taxpayer group" wants a prominent place at the table.

Former City Councilman Dale Fritchen — the lone wolf and only vote against bankruptcy when Stockton opted for that route on June 28, 2012 — is a key member of The Taxpayers Working Group.

David Renison, president of the San Joaquin County Taxpayers Association, is another.

It's hard to criticize Fritchen, Renison and other members of the group for wanting to get involved. Frankly, this community needs more people who want to get involved in matters.

But the operative questions are: 1) Why now? 2) Why did they wait so long? 3) Does the group truly represent the average taxpayer, or just a small segment of the taxpayer base?

Basically, the mediation train pulled out of the station long ago

and Taxpayers Working Group is running down the track, futile in its attempt to hop on board.

We agree with Stockton City Manager Bob Deis that the taxpayer group should not be included in the process. We urge the bankruptcy court to deny the group a place in the confidential bankruptcy mediation.

Deis had strong words about the involvement of Fritchen and Renison, stating that a lawyer "found some people that wish they were on the City Council but are not" to try to get in the back door of bankruptcy mediation.

While we don't support the taxpayer group's intentions, Fritchen and Renison are not political Johnny-come-latelys. Fritchen not only served as a city councilman but also was an elected Manteca Unified school trustee. He worked diligently on the part of MUSD's students, teachers, staff and other stakeholders. Renison cares enough about his community to also have served as the foreman of a San Joaquin civil County grand jury.

Regardless of political bent, they'll both likely be finding ways to serve their chosen community long after Deis leaves the city in four months.



CRAIG SANDERS/Record File 2011

Stockton City Manager Bob Deis, foreground, and then-City Councilman Dale Fritchen listen to public comment during a council meeting in August 2011.

**ANNOTATED AGENDA
CITY COUNCIL
MEETING OF JUNE 25, 2013**

1. CLOSED SESSION CALL TO ORDER/ROLL CALL 4:01 PM

Roll Call

Present:

Councilmember Tubbs

Councilmember Zapien

Councilmember Miller

Mayor Silva

Councilmember Holman

Absent:

Councilmember Burgos, and Vice Mayor Canepa.

Note: Vice Mayor Canepa arrived to Closed Session at 4:03 p.m.

Note: Councilmember Burgos arrived to Closed Session at 4:05 p.m.

2. ADDITIONS TO CLOSED SESSION AGENDA

None.

3. ANNOUNCEMENT OF CLOSED SESSION

3.1

13-0489 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Number of Cases: Five

Name of Case: Wells Fargo Bank v. City of Stockton (San Joaquin County Superior Court Case No. 39-2012-00277662)

Name of Case: Wells Fargo Bank, National Association, as Indenture Trustee v. City of Stockton (San Joaquin County Superior Court Case No. 39-2012-00280741)

Name of Case: In re City of Stockton, California - Debtor (United States Bankruptcy Court, Eastern District of California Case No. 2012-32118)

Name of Case: City of Stockton v. Marina Towers LLC, et al. (San Joaquin County Superior Court Case No. CV022054)

Name of Case: Richard Price, et al. v. City of Stockton, Redevelopment Agency, et al. (United States District Court, Eastern District Case No. CIV.S-02-0065 LKK JFM)

This Closed Session is authorized pursuant to Section 54956.9(a) of the Government Code.

3.2 13-0490 CONFERENCE WITH LABOR NEGOTIATOR

Agency Designated Representative: Bob Deis

Employee Organizations: Unrepresented Units, Stockton City Employees' Association, Operating Engineer's Local 3, Mid-Management/Supervisory Level Unit, Unrepresented Management/Confidential, Law Department, Stockton Police Management Association, Stockton Firefighters Local 456 International Association of Firefighters, Stockton Fire Management, Stockton Police Officers' Association (SPOA)

This Closed Session is authorized pursuant to Section 54957.6(a) of the Government Code.

3.3 13-0491 CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

Number of Cases: Two

Based on existing facts and circumstances, there is significant exposure to litigation pursuant to Government Code Section 54956.9(c).

3.4 13-0492 CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

Number of Cases: One

Based on existing facts and circumstances, there is significant exposure to litigation pursuant to Government Code Section 54953.9(b).

4. PUBLIC COMMENT*

Tocan Nguyen - shared her personal political views

5. RECESS TO CLOSED SESSION

The Council recessed to Closed Session at 4:06 p.m. The Council returned from Closed Session and recessed at 4:45 p.m.

6. REGULAR SESSION CALL TO ORDER/ROLL CALL 5:35 PM

Roll Call

Present:

Councilmember Burgos

Councilmember Tubbs

Councilmember Zapien

Councilmember Miller

Mayor Silva

Councilmember Holman

Vice Mayor Canepa

7. INVOCATION/PLEDGE TO FLAG

Councilmember Tubbs provided the Invocation. The Pledge of Allegiance was led by Councilmember Miller.

8. REPORT OF ACTION TAKEN IN CLOSED SESSION

City Attorney John Luebberke announced that there was no reportable action taken during Closed Session this evening.

9. ADDITIONS TO REGULAR SESSION AGENDA**

None.

10. PROCLAMATIONS, COMMENDATIONS, OR INVITATIONS

10.1 COMMENDATION: Recipient of Gourmand World Cookbook Awards "Best Foreign Cuisine Book" in the World

RECIPIENT: Professor Ken Albala

11. CITIZENS' COMMENTS, ANNOUNCEMENTS, OR INVITATIONS*

Tocan Nguyen - shared her personal political views

[Document filed - Tocan Nguyen \(PDF\)](#)

Leandro Vicuna - financial planning for college students

Elizabeth Wong Fontana - antiquated codes related to pedi-cabs at public gatherings

Karen Griggs - Marshall Plan

Diana Buettner - Occupy Stockton

Patti Doll - invitation to Cleveland School Remembers event

Mark Stebbins - supported having City Manager Deis remain as City Manager

Vincent Sayles - shared his personal religious beliefs

Dennis Cochran - Enterprise Zone extension

Cynthia Gail Boyd - City Manager retirement; diversity on the Police force

Ralph White - diversity on the Police force; Measure W spending for hiring;

retirement payments to past councilmembers; asked for town hall meetings in each district regarding tax measure

Jorge Martinez, Oak Park Community Watch - crime in Stockton

Deborah Wygant - spoke in support of Safe Streets tax plan

Don Aguilard - golf tournament; SMG funding

James Young - graffiti in his neighborhood

Matt Arnaiz - Read letter dated June 25, 2013 to City Council into the record regarding tax initiatives.

Document filed - Matt Arnaiz (PDF)

Tom Ruemmler - building permit fees

Lynne Robustelli - fiscal crisis in Stockton; impact fees

Debbie Dewdell - opposed tax money going into General Fund and not restricted funds; requested copy of tax audit while Mayor Johnston was in office

12. **CONSENT AGENDA**

Council passed a Motion to adopt the Consent Agenda with a single vote.

Moved by: Councilmember Zapien, seconded by Councilmember Miller.

Vote: Motion carried 7-0

Yes: Councilmember Burgos, Councilmember Tubbs, Councilmember Zapien, Councilmember Miller, Mayor Silva, Councilmember Holman , and Vice Mayor Canepa.

12.1 **13-0326 CREATE A NEW UNCLASSIFIED/UNREPRESENTED CLASSIFICATION FOR THE COMMUNITY DEVELOPMENT DEPARTMENT**

Resolution 2013-06-25-1201 creating the new unclassified/unrepresented classification, and establishing the salary range for Assistant Director of Community Development.

Staff Report

Draft Resolution

Resolution 2013-06-25-1201

12.2 **13-0386 DEDICATION OF AN EMERGENCY VEHICLE ACCESS EASEMENT AND A MAINTENANCE EASEMENT TO STOCKTON UNIFIED SCHOOL DISTRICT THROUGH A PORTION OF BLOSSOM CIRCLE AT HORSETAIL DRIVE**

Resolution 2013-06-25-1202 authorizing the grant of an emergency vehicle access easement and maintenance easement to Stockton Unified School District ("SUSD") at the terminus of Blossom Circle at Horsetail Drive adjacent to S. L. Fong Park.

Staff Report

Attachment A - Resolution 08-0137

Attachment B - Vicinity Map

Attachment C - Aerial Map

Draft Resolution

Exhibit 1 - Map

Exhibit 2 - Legal Description

NOTE: A memorandum to the Council dated June 24, 2013, regarding additional information for item 12.2 was distributed around the bench and filed.

Document filed - Kurt Wilson (PDF)

Resolution 2013-06-25-1202

12.3 **13-0424 MOTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE POLICIES WITH METROPOLITAN LIFE FOR LIFE AND ACCIDENTAL DEATH & DISMEMBERMENT BENEFITS AND RELIANCE FOR LONG TERM DISABILITY BENEFITS**

Motion 2013-06-25-1203 authorizing the City Manager to award bids and execute policies with Metropolitan Life (MetLife) as the

City's Life and Accidental Death and Dismemberment (AD&D) Benefit Provider and Reliance as the City's Long Term Disability (LTD) vendor.

Staff Report

Attachment A - MetLife Life and AD&D Policy

Attachment B - Reliance LTD policy

Attachment C - Financial table Life & AD&D

Attachment D - Financial table LTD only

Attachment E - Financial table for Life AD&D and LTD

12.4 **13-0441 AMENDMENTS TO THE MEMORANDUMS OF UNDERSTANDING BETWEEN THE CITY OF STOCKTON AND THE FIRE UNIT AND FIRE MANAGEMENT UNIT AND MODIFICATIONS TO THE UNREPRESENTED MANAGEMENT/CONFIDENTIAL AND LAW EMPLOYEES' COMPENSATION PLAN**

Motion 2013-06-25-1204 adopting the attached Amendments to the Fire Unit and Fire Management Unit Memorandums of Understanding (MOU's) expiring on June 30, 2013, and modifications to the Unrepresented Management/Confidential and Law Employees' Compensation Plan. The City Council adoption will authorize the City Manager to execute the MOU amendments and compensation plan modifications and also authorizes the City Manager to take whatever actions are appropriate to carry out the implementation of these amendments.

Staff Report

Attachment A - Fire Unit Amendment

Attachment B - Fire Unit Amendment - redlined version

Attachment C - Fire Management Amendment

Attachment D - Fire Management Amendment - redlined version

Attachment E - Unrepresented Employee Compensation Plan

Attachment F - Unrepresented Employee Compensation Plan - redlined version

12.5 **13-0449 COMPUTER SERVICES AGREEMENT FOR THE SAN JOAQUIN COUNTY CRIMINAL JUSTICE INFORMATION SYSTEM**

Resolution 2013-06-25-1205 authorizing an agreement with San Joaquin County for the City of Stockton Police Department's access and use of the County Criminal Justice Information System, and authorizing the City Manager to execute the agreement in the amount of \$54,218, for a one-year period.

Staff Report

Attachment A - 2013-14 Rate Schedule

Draft Resolution

Exhibit 1 - Draft CJIS Agreement

Resolution 2013-06-25-1205

12.6 **13-0451 AUTHORIZATION TO PAY SAN JOAQUIN GENERAL HOSPITAL FOR SEXUAL ASSAULT EXAMINATIONS**

Motion 2013-06-25-1206 adopting a motion authorizing the payment to San Joaquin General Hospital for sexual assault examinations that under Penal Code section 13823.95, the City is obligated to pay.

Staff Report

12.7 **13-0456 AWARD CONTRACT TO CALIFORNIA MATERIALS, INC. FOR TRUCK HAULING SERVICES FOR ASPHALT CONCRETE AND ASPHALT CONCRETE GRINDINGS FOR FISCAL YEAR 2013-2014, PROJECT NO. 13-07**

Motion 2013-06-25-1207 adopting the specifications, and authorizing the City Manager to execute a one-year contract in the amount of \$237,500 with California Materials, Inc. for Truck Hauling Services for Asphalt Concrete and Asphalt Concrete Grindings, Project No. 13-07, for fiscal year 2013-2014.

It is further recommended that the motion authorize the City

Manager to take appropriate actions to carry out the purpose and intent of this motion.

Staff Report

Attachment A - Contract with California Materials, Inc.

12.8 **13-0457 AWARD CONTRACT TO GEORGE REED, INC. FOR THE PURCHASE OF HOT MIX ASPHALT FOR THE PERIOD OF JULY 1, 2013 THROUGH JUNE 30, 2014, PROJECT NO. 13-06**

Motion 2013-06-25-1208 approving the specifications, and authorizes the City Manager to execute a one-year contract in the amount of \$610,500 with George Reed, Inc. for the Purchase of Hot Mix Asphalt for the period of July 1, 2013 through June 30, 2014, Project No. 13-06.

It is further recommended that the motion authorize the City Manager to take appropriate actions to carry out the purpose and intent of this motion.

Staff Report

Attachment A - Contract with George Reed, Inc.

12.9 **13-0458 AWARD CONTRACT TO ANRAK CORPORATION FOR ASPHALT CONCRETE COLD PLANING FOR FISCAL YEAR 2013-2014, PROJECT NO. 13-05**

Motion 2013-06-19-1209 adopting the specifications, and authorizing the City Manager to execute a one-year contract in the amount of \$121,250 with Anrak Corporation for Asphalt Concrete Cold Planing, Project No. 13-05, for fiscal year 2013-2014.

It is further recommended that the motion authorize the City Manager to take appropriate actions to carry out the purpose and intent of this motion.

Staff Report

Attachment A - Contract with Anrak Corp.

12.10 **13-0460 LODI UNIFIED SCHOOL DISTRICT AFTER SCHOOL SAFETY PROGRAM CONTRACT**

Motion 2013-06-25-1210 authorizing the City Manager to execute the Lodi Unified School District (LUSD) Services Agreement Contract (Attachment A) for the After School Safety and Enrichment Program. The School District is a grant recipient and wishes to contract with the City of Stockton to staff and administer after-school programs at thirteen (13) sites within LUSD Stockton for the 2013-14 fiscal year, for an amount not to exceed \$469,716. It is further recommended that the motion authorize the City Manager to make any and all appropriations and transactions appropriate to carry out the funding for the Program.

Staff Report

Attachment A - Lodi USD Services Agreement 2013-2014

Attachment B - Lodi USD Operating Budget 2013-14

12.11 13-0463 SEWER PIPELINE CLEANING PROJECT M13012

Motion 2013-06-25-1211 authorizing the City Manager to execute a service contract with Nor Cal Pipeline Services of Yuba City, California in the amount of \$365,500 for Sewer Pipeline Cleaning Services (Project M13012)

Staff Report

Attachment A - Service Contract

Attachment B - CSPA Consent Decree

12.12 13-0546 COUNCIL AUDIT COMMITTEE MEETING OF JUNE 11, 2013

Motion to accept for filing the Audit Committee meeting minutes of June 11, 2013.

Minutes - June 11, 2013 Council Audit Committee

12.13 13-0547 APPROVAL OF MINUTES

Motion 2013-06-25-1213 approving the minutes of the Stockton City Council/Successor Agency to the Redevelopment Agency/Public Financing Authority Concurrent meeting of May 21, 2013; and, Special City Council Meetings of May 14, 2013 (Proposed Charter Amendment Study Session); June 3, 2013 (Budget Study Session);

June 4, 2013 (Budget Study Session); and, June 18, 2013 (Closed Session).

Minutes - May 21, 2013 City Council

Minutes - May 14, 2013 Proposed Charter Amendment Study Session

Minutes - June 3, 2013 Budget Study Session

Minutes - June 4, 2013 Budget Study Session

Minutes - June 18, 2013 Closed Session

13. ADMINISTRATIVE MATTERS

None.

14. UNFINISHED BUSINESS

None.

15. NEW BUSINESS

15.1 13-0429 MINOR AMENDMENT TO CONTRACT BETWEEN THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM BOARD OF ADMINISTRATION AND THE CITY OF STOCKTON TO PROVIDE THE PROVISIONS OF RETIREMENT LAW SECTION 20475 (DIFFERENT LEVEL OF BENEFITS) TO POLICE SAFETY EMPLOYEES

Resolution of Intention 2013-06-25-1501 approving an amendment to the City of Stockton's contract with the California Public Employees' Retirement System (CalPERS), to establish a third tier of retirement benefits for new employees in the Stockton Police Management Association (SPMA), the Stockton Police Officers' Association (SPOA), and unrepresented police safety employees, pursuant to the SPOA and SPMA Memoranda of Understanding and Government Code section 20475 (Different Level of Benefits).

Moved by: Vice Mayor Canepa, seconded by Councilmember Burgos.

Vote: Motion carried 7-0

Yes: Councilmember Burgos, Councilmember Tubbs, Councilmember Zapien, Councilmember Miller, Mayor Silva, Councilmember Holman , and Vice Mayor Canepa.

Staff Report

Attachment A - Resolution of Intention

Attachment B - CalPERS Amendment Valuation

Attachment C - Retirement Plan Comparison

Attachment D - Draft Ordinance

Attachment E - Certification of Compliance with Government Code Section 20475

Attachment F - Certification of Compliance with Government Code Section 7507

Attachment G - Certification of Governing Body's Action

Powerpoint Presentation

15.2 13-0549 FUNDING PROPOSAL FOR STOCKTON'S MARSHALL PLAN ON CRIME AND RECOVERY FROM BANKRUPTCY

Public Comment was heard from David Renison, Gary Malloy, Motecuzoma Sanchez, Lynne Robustelli, Mark Anderson, Tom Ruemmler, and Karen Griggs.

Motion 2013-06-25-1502 adopted authorizing the City to schedule a noticed public hearing and consideration of a tax measure on July 9, 2013, for placement before the voters at the regularly scheduled election of November 5, 2013. On July 9 it will be recommended that the Council adopt a Resolution declaring a fiscal emergency; calling for the election and approving an Ordinance establishing the specificity for a $\frac{3}{4}$ cent sales tax to be considered by the voters.

Moved by: Mayor Silva, seconded by Vice Mayor Canepa.

Vote: Motion carried 7-0

Yes: Councilmember Burgos, Councilmember Tubbs, Councilmember Zapien, Councilmember Miller, Mayor Silva, Councilmember Holman , and Vice Mayor Canepa.

Staff Report

Powerpoint Presentation

Resolution of Intention 2013-06-25-1502

15.3 13-0495 FISCAL YEAR 2012-13 GENERAL FUND THIRD QUARTER BUDGET UPDATE AND YEAR END PROJECTION

This item is informational only and does not require City Council action.

Staff Report

Attachment A - 2012-13 3rd Quarter Gen Fund 6-17-13pm

Attachment B - 2012-13 3rd Quarter Revenues Gen Fund

Powerpoint Presentation

15.4 13-0401 SMG BUSINESS PLAN FOR FISCAL YEAR 2013-2014

Public Comment was heard from Anthony Burgher, Motecuzoma Sanchez, Gary Malloy, Joni Anderson, and Tom Ruemmler.

Motion 2013-06-25-1504 approved accepting the Fiscal Year 2013-2014 Business Plan submitted by SMG (Attachment A).

Moved by: Councilmember Zapien, seconded by Councilmember Miller.

Vote: Motion carried 7-0

Yes: Councilmember Burgos, Councilmember Tubbs, Councilmember Zapien, Councilmember Miller, Mayor Silva, Councilmember Holman , and Vice Mayor Canepa.

Staff Report

Attachment A - SMG 2013-2014 Business Plan

Powerpoint Presentation**15.5 13-0540 CITY MANAGER SELECTION PROCESS**

Staff recommends that the City Council through motion action: 1) approve a general recruitment and selection process for hiring a new City Manager, and 2) appoint an ad hoc committee, one member of which is the Mayor, to manage that process.

Public Comment heard from Bob Gutierrez, Karen Griggs, and Lynne Robustelli.

Motion 2013-06-25-1505 directing staff to issue RFP within 3-weeks, asking for responses within 2-weeks; Council as a whole

Moved by: Councilmember Zapien, seconded by Councilmember Tubbs.

Vote: Motion carried 6-1

Yes: Councilmember Burgos, Councilmember Tubbs, Councilmember Zapien, Councilmember Miller, Councilmember Holman , and Vice Mayor Canepa.

No: Mayor Silva.

Staff Report

NOTE: Two memoranda to the Council both dated June 25, 2013, regarding additional information for item 15.5 was distributed around the bentch and filed.

Document filed - Bonnie Paige (PDF)

Document filed - Mayor Anthony Silva (PDF)

15.6 13-0507 NOMINEES FOR THE CITIZENS ADVISORY COMMITTEE, CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES

It is recommended that the City Council by motion action, approve the nomination of a minimum of three individuals from the applications received to be submitted to the California Correctional Health Care Services Facility for selection by the Warden of two representatives to serve on the Citizens' Advisory Committee.

Staff ReportApplicationsCDCR CAC Penal Code Section 5056DOM Section 101090.11.3

Motion 2013-06-25-1506 approving the nomination of all seven individuals from the applications received to be submitted to the California Correctional Health Care Services Facility for selection by the Warden of two representatives to serve on the Citizens' Advisory Committee.

Moved by: Councilmember Zapien, seconded by Mayor Silva.

Vote: Motion carried 5-1

Yes: Councilmember Burgos, Councilmember Tubbs, Councilmember Zapien, Mayor Silva, and Vice Mayor Canepa.

No: Councilmember Miller.

Absent: Councilmember Holman .

16. HEARINGS***

16.1 13-0493 PUBLIC HEARING ADOPTING THE PROPOSED FISCAL YEAR 2013-2014 ANNUAL BUDGET; APPROVING THE 2013-2018 CAPITAL IMPROVEMENT PROGRAM; APPROVING THE 2013-2014 FEE SCHEDULE; APPROVING THE 2013-2014 CALIFORNIA CONSTITUTIONAL APPROPRIATIONS LIMIT; AND ADOPTING THE 2013-2014 ANNUAL BUDGET FOR THE SUCCESSOR AGENCY TO THE FORMER STOCKTON REDEVELOPMENT AGENCY

It is recommended that the City Council adopt a resolution that:

1. Adopts the Fiscal 2013-2014 Annual Budget as part of the City's Pendency Plan (while under protection of the bankruptcy code), and also adopts the Proposed 2013-2018 Capital Improvement Program, the Proposed 2013-2014 Fee Schedule and the 2013-2014 Constitutional (Gann) Appropriations Limit.

And it is recommended that the Successor Agency to the former Stockton Redevelopment Agency (Successor Agency) approve a resolution that:

2. Adopts the Fiscal 2013-2014 Annual Budget for the Successor Agency to the former Stockton Redevelopment Agency (Exhibit 1 to the resolution).

free form pursuant to Council Policy, motion to extend time of the meeting

Moved by: Mayor Silva, seconded by Councilmember Miller.

Vote: Motion carried 7-0

Yes: Councilmember Burgos, Councilmember Tubbs, Councilmember Zapien, Councilmember Miller, Mayor Silva, Councilmember Holman , and Vice Mayor Canepa.

Approve It is recommended that the City Council adopt **Resolution 2013-06-25-1601-01** that:

1. Adopts the Fiscal 2013-2014 Annual Budget as part of the City's Pendency Plan (while under protection of the bankruptcy code), and also adopts the Proposed 2013-2018 Capital Improvement Program, the Proposed 2013-2014 Fee Schedule and the 2013-2014 Constitutional (Gann) Appropriations Limit.

Moved by: Councilmember Zapien, seconded by Councilmember Burgos.

Vote: Motion carried 7-0

Yes: Councilmember Burgos, Councilmember Tubbs, Councilmember Zapien, Councilmember Miller, Mayor Silva, Councilmember Holman , and Vice Mayor Canepa.

Approve recommended that the Successor Agency to the former Stockton Redevelopment Agency (Successor Agency) approve **Resolution 2013-06-25-1601-02** that:

2. Adopts the Fiscal 2013-2014 Annual Budget for the Successor Agency to the former Stockton Redevelopment Agency (Exhibit 1 to the resolution).

Moved by: Councilmember Holman , seconded by Councilmember Miller.

Vote: Motion carried 7-0

Yes: Councilmember Burgos, Councilmember Tubbs, Councilmember Zapien, Councilmember Miller, Mayor Silva, Councilmember Holman , and Vice Mayor Canepa.

Staff Report

Attachment A - 2013-14 Fee Schedule

Resolution 1 City Proposed 2013-14 Annual Budget.doc

Resolution 2013-06-25-1601-01

Exhibit 1 City revision to 2013-2014 Annual Budget

Resolution 2 Successor Agency of the Redevelopment Agency Adopting Annual Budget FY2013-14.doc

Resolution 2013-06-25-1601-02

Exhibit 1 to Resolution 2 Successor Agency Budget 2013-2014

Powerpoint Presentation

Note: A memorandum to the Council, dated June 24, 2013, regarding additional information for Item 16.1, was distributed around the bench and filed.

Document filed - John Beckman (PDF)

17. COUNCIL COMMENTS

Councilmember Tubbs - Information on summer youth programs online; community trash can painting; Washington Post article on Jonetta Neighle; would like to explore economic development; appointing a Sgt. at Arms so Council meetings, would flow smoothly

Councilmember Burgos - the open meeting process will expose folly; Gospel Center Rescue Mission 73rd Anniversary; importance of Marshall Plan in light of another victim to violence this evening

Councilmember Zapien - Marshall Plan; San Joaquin County Bar Association; Spanish presentation on Marshall Plan; supported development of Economic Development plan

Councilmember Miller - Greater Stockton Chamber of Commerce and Hispanic Chamber of Commerce installation of officers this week

18. ADJOURNMENT

INFORMATIONAL ITEMS

13- **INFORMATIONAL ITEM - SUMMER PROGRAMS OFFERED BY**
0459 **CITY OF STOCKTON RECOMMENDATION This item is**
informational only and does not require City Council action.

Information Item

Attachment A - Teen Impact Center Summer Calendar



City of Stockton

Council Chamber - City Hall
425 N. El Dorado Street,
Stockton CA

Legislation Text

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FUNDING PROPOSAL FOR STOCKTON'S MARSHALL PLAN ON CRIME AND RECOVERY FROM BANKRUPTCY

RECOMMENDATION

Schedule a noticed public hearing and consideration of a tax measure on July 9, 2013, for placement before the voters at the regularly scheduled election of November 5, 2013. On July 9 it will be recommended that the Council adopt a Resolution declaring a fiscal emergency; calling for the election and approving an Ordinance establishing the specificity for a $\frac{3}{4}$ cent sales tax to be considered by the voters.

Summary

This report presents a recommendation to place a tax measure before the voters on November 5, 2013. Its purpose will be twofold. First, it will provide the necessary general fund resources to fund the City's comprehensive Marshall Plan on Crime. Second, it will provide the necessary resources to put the general fund back into a solvent position and fund the City's bankruptcy exit plan. While six of you directed me to come back with this funding plan, explained later in this report such action will require a unanimous vote of the Councilmembers present to hear the item.

As you know, bankruptcy was a necessary action to maintain health and safety services to our community. It was a necessary but interim condition for the City to develop an ultimate recovery plan. In addition to emerging from bankruptcy and becoming solvent again, the City must restore services and, most importantly, invest in the Marshall Plan on Crime. In order to meet these objectives the City needs additional tax revenues. It is important to note that while the tax measure will result in significant new revenues, it will not get the City back, revenue-wise, to where it was before the Great Recession (which was nothing short of a disaster for Stockton), nor provide the means to restore all service reductions. Moreover, even with all the restructuring savings the City is seeking and can obtain only under Chapter 9, the general fund will fall an average of \$11 million short each year from being balanced just at its current level of inadequate public services. This leaves no resources to pay for the Marshall Plan, and leaves the City stuck in a service insolvent position. This is not a feasible option if the City is to achieve a sustainable budget that pays for adequate public services.

The only way to balance the general fund budget sustainably over time, restore adequate reserves, and improve public safety in the community, is to seek voter approval of additional tax revenue. The City has polled likely voters and determined that a 0.75% local sales tax, if structured so that the City could pay for improved safety services, has a good chance of garnering the needed majority vote for

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a general tax measure. A unanimous vote of the members of the Council present on July 9, the date of the public hearing, is required to declare a fiscal emergency that allows such a tax on the November 5, 2013 ballot. Given the critical need to improve public safety funding, the lag time before tax proceeds come in and the lengthy process to fully implement the Marshall Plan, the City needs to pursue this tax in November, rather than wait until 2014. While the City has not concluded its bankruptcy proceeding, and may not have done so by the November 5 election, we have been declared eligible for Chapter 9 protection, and we will have a bankruptcy exit plan (Plan of Adjustment) before the judge by the election. The judge has made various rulings that minimize our concerns about voter approval of a tax before exiting bankruptcy. Furthermore, even if we received the judge's approval of a Plan of Adjustment, it would be contingent upon a voter approval of additional revenues, given the insolvent nature of the general fund from a cash and service delivery standpoint. Given the time constraints for a November ballot, the City must take action now.

The "old" City of Stockton

Prior to beginning the road to Chapter 9 protection, staff felt and the Council concurred, the City was not in a supportable position to ask voters for additional tax revenues. At that time, we had: (1) compensation that was above the labor market average; (2) a retiree medical insurance program that would require setting aside 30% of payroll for the next 30 years to fund; (3) outstanding lawsuits with two labor groups over past compensation impositions; (4) a growing debt burden; and, (5) no realistic potential to restore services. Any new taxes would have been consumed by the above factors. Professional polling supported the City assertions that voters would not approve new taxes without restoring services.

The "new" City of Stockton

However, we now have new labor agreements that have radically reduced compensation to a level that is below the labor market average for similar public agencies. We have resolved any outstanding lawsuits with the two labor groups. We have agreements with labor and retirees that will lead to the complete elimination of retiree medical insurance. The general fund's annual budget is \$40 million lighter due to these reforms. We are in the process of restructuring our debt burden. We now have an omnibus plan for restoring public safety services via the Marshall Plan on Crime. We have a new management team implementing "best practices" throughout the organization. In other words, we now have something to offer the voters. We have a reformed City organization with a comprehensive plan to restore public safety services.

The recommended action will give voters a chance to restore the revenues necessary to operate the City effectively. Management and policy changes made since the disaster will allow the City to operate efficiently. There are alternatives, of course, and they are presented here. The primary alternative approach would be more service reductions and expense cutting, but I do not believe this is consistent with a viable municipality. It should be noted the suggestion that the City somehow pull out of CalPERS to solve our problems is just a variation on this theme. Losing retirement benefits that are the standard statewide would, as the prevailing evidence showed in the bankruptcy eligibility

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proceedings, result in a mass exodus of employees, leaving the City unable to staff at the numbers and quality needed to sustain critical public services. Cancelling the CalPERS contract would also saddle the City with a \$946 million termination payment obligation to pay for accrued liability, which the City has no ability to fund. We would have a crippled organization with a mass employee exodus and no potential for hiring replacements. We would also gain a new “battle front” with another creditor that will consume time and resources, but to what ends? We would have to replace CalPERS with a market competitive pension plan. Instead, we need to continue advocating for CalPERS reform in Sacramento.

Finally, there is the nature of the tax proposal itself. While it is currently being drafted, some basic concepts I heard from Council members and the public include: (1) it should be a general tax to address the two goals of exiting bankruptcy and the Marshall Plan; (2) if “good times” come back, there should be some measures to reduce the likelihood of monies being “wasted” on new risky adventures or excessive employee compensation; and (3) the vast majority of the new tax proceeds should be spent on restoring public safety services. I look forward to any further goals from the Mayor or Council before the City Attorney and I submit ballot measure language for the July 9th City Council agenda.

BACKGROUND

Budget Impacts

Given Stockton’s heavily leveraged position, the Great Recession was nothing short of a fiscal disaster for the City. General fund revenues plunged from about \$203 million to \$166.5 million in one year and kept falling with a projected low of \$156.8 million as of your Quarter 2 Budget Report. This revenue implosion coincided with growing costs for debt service, retiree medical coverage and compensation and benefits for employees. The City initially drew down any and all reserves, followed by deep cuts to services and reductions in any discretionary cost categories. Eventually the City was forced to declare a fiscal emergency and unilaterally implement employee compensation and benefit cuts. When these efforts all proved insufficient the City was forced to enter the AB506 mediation process and finally bankruptcy in order to address debt, labor and retiree medical cost obligations.

In other words, the City of Stockton was and remains service insolvent, meaning it is unable to pay all costs of providing services at the level and quality required for community health, safety and welfare. The budgets for fiscal years 2008-09, 2009-10 and 2010-11 combined to implement \$52 million in labor compensation reductions and \$38 million in staffing and service level reductions, for a total of \$90 million in cuts, equivalent to a 36% reduction in the general fund budget.

Employee compensation was reduced to levels that surveys now show to be below the labor market. Depending on the labor group, compensation was cut between 12% and 34%, including the following impacts:

- Furloughs since 2008

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- Salary COLAs eliminated beginning in 2008
- Employees paying their own employee retirement contribution of 7-9% of salary
- Medical plan design changes resulting in higher deductibles and co-pays, with a cap on City contribution
- Add-pays, deferred compensation, longevity, education, uniform allowances either eliminated or reduced
- Reduction in leave accruals and change in sick/vacation leave cash outs at retirement

Staffing level reductions resulted in the following general fund position cuts:

- Sworn police officers down 25% (-98 FTE)
- Non-sworn police staffing down 20% (-47 FTE)
- Fire staffing down 30% (-76 FTE)
- Non-safety staffing down 43% (-203 FTE)

In addition to 424 total general fund position cuts (31% of total), a net reduction of 42 positions in all other funds resulted in a loss of 466 positions for all funds, or 25% of the entire City workforce. Back when the budget cuts began in FY 2008-09, about 69% of general fund expenditures were allocated to labor costs, and most labor costs (86%) were for public safety. As a result, Stockton has been unable to avoid making reductions in police and fire services, despite the fact that the City ranks low in median income and high in total crime rate. The following factors highlight why the impact of these public safety reductions is more critical in Stockton than in most other California cities.

Police Service Impacts: Low staffing levels have had the following significant impacts on safety for the community:

- Activation of a “condition blue” during times of peak activity where residents must use on-line or telephone reporting and depending on the type of report, the department may only respond to crimes-in-progress.
- Elimination of the School Resource Officer Program which puts the burden on school districts to provide funding for a law enforcement presence on campus. This has contributed to a rise in juvenile crime and gang membership.
- Reduction in gang and drug focused missions to only those funded with grants or outside agencies. Gang-related homicides have increased 525% in three years
- Elimination of the Narcotics Enforcement Team resulted in an increase of drug trafficking within the City and also reduces the funds received through disposition of asset forfeiture

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proceeds. These proceeds are used to fund capital equipment and other one-time needs such as tactical gear, weapons and protective equipment critical to equipping sworn staff.

- Significant cutbacks to Proactive Policing Strategy have erased all progress made in the mid-2000s, returning the city to the high crime rates and overwhelming perception that the city is no longer a safe place to live, work or raise a family. A limited Proactive Policing Strategy is employed only on a case-by-case basis. However, there is a complete inability to sustain any efforts after a major mission. The officers are simply too busy responding to calls and cannot get out of their cars to interact with the community as part of any community policing effort. The detectives group has been greatly reduced, thus triaging what crimes they do investigate.
- Reduction of Community Service Officers has severely limited the ability of the Police Department to attend community meetings and respond to non-emergency accidents and calls for service including traffic control and parking enforcement (which has also reduced traffic violation revenue).

Fire Service Impacts: Sworn staffing has been reduced from 225 total sworn positions at the beginning of FY 2010-11 to the current level of 181 for a total reduction of 44 positions, a reduction of nearly 32% in the past 24 months. Staffing on each piece of equipment has been reduced by one person per company, with truck companies currently staffed at four persons, and engine companies staffed with three personnel. In addition, one fire station and one engine company have closed due to the reduced staffing plan. These reductions have had the following major service impacts on the community:

- Reduction in the number of trucks assigned in the northern half of the City, which increases the response time for a second truck company, when required, on all structure fires.
- Increase in response times for engines located outside of the Fire Station One area by 1-3 minutes on average and an average increase in 5 to 7 minutes to residents and businesses within in the Fire Station One area.

Exacerbating these impacts are the following workload demands:

- The Fire Department responded to more than twice the number of fire calls of Fresno, Sacramento, or Oakland, each of which have 50,000-150,000 more in total population served and have more than twice the on-duty staffing.
- The Fire Department responded to 483 working structure fires in 2011, compared to 599 in the City of Fresno, 273 in the City of Oakland and 444 in the City of Sacramento. The City of Stockton has fewer than half the fire sworn staffing of the Cities of Fresno, Oakland, and Sacramento.
- AMR (the paramedic service provider in Stockton) exceeded its maximum emergency response time every 4 hours in the City of Stockton, compared to exceeding that response time criteria only every 70 plus hours in the cities of Lodi and Tracy.

Public Infrastructure and City Facility Impacts: The City has been unable to dedicate sufficient dollars of regular and periodic maintenance of the city's public infrastructure or facilities for many years. The general fund contributed just \$575,000 in FY 2012-13 to capital improvements, with no funding programmed in the FY 2012-17 Capital Improvement Program for the succeeding four years of the proposed five-year program. While not a complete list, the following illustrates the magnitude of the deferred maintenance and capital investment:

- **Vehicles:** The replacement backlog is \$8.5 million, with 172 units past their useful life.
- **Trees:** About \$3.1 million is needed to bring the urban forest up to an acceptable standard, with an additional \$3.5 million is needed annually to provide proper maintenance.
- **Roadways:** Approximately \$10 million per year is needed to maintain the City's roadways in their current condition; the City's current street maintenance program allocates only \$2 million per year. The current condition can be quantified using a Pavement Condition Index (PCI) which provides an overall rating between 0 and 100 of the entire pavement in a community. The current PCI for Stockton is 66, which, while in the middle of the fair range, will degrade 2 to 3 points per year. If the network is allowed to deteriorate, repairs become more expensive as cost effective maintenance strategies are no longer feasible.
- **Parks:** About \$12 million would be required to bring play areas, park furnishings, irrigation systems, buildings, courts, ball fields, and flatwork up to a standard level, able to be maintained in the future.
- **City Facilities:** The proposed program to provide critically needed improvements to City Hall includes \$7 million to replace the roof, replace the HVAC system, and update interior finishes. For a complete renovation, the cost is likely double that amount (\$14 million). Other City facilities would require at least \$6 million to catch up on maintenance, not including about \$7 million for roof repair alone.

Library Service Impacts: A reduction in the Stockton-San Joaquin County Public Library system-wide operating hours by 28% and staffing levels by 50%. Customer services and literacy programs in the libraries have been reduced and there are fewer books and library materials available to the public, as well as long wait times for materials that are available. Specific reductions in library services include:

- Reduction of open hours by 48% and 11% in City and County branches, respectively.
- Reduction of Mobile Library hours by 60%.
- Reduction in books and materials by 50% over the last six years, which severely impacts the ability to acquire new format materials, e.g., digital books.
- Suspension of Homework Center Grants offered to elementary and middle school students

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with low grade point averages and limited opportunities which put them at educational risk.

Community Program Service Impacts: As a result of the elimination of 15 full-time positions and an 80% reduction in part-time hours, Recreation programs have experienced significant service reductions including:

- Partial Closure of the McKinley Community Center in 2009. Most of the recreation programs were moved to other community centers, so residents have to travel further to participate in these recreation opportunities.
- Reduction in operating hours at all other community centers of 20%.
- Fewer recreational classes.
- Decrease in operational hours at the Children's Museum, Pixie Woods amusement park, and Oak Park Senior Center.
- Consolidation of After School Program (ASP) sites resulting in reduced programs for at-risk youth.

Internal Support Needs: What is invisible to most citizens is the degradation of programs necessary to support all services, including public safety.

- The internal self-insurance funds were gradually drained of their resources to the point our workers compensation fund has a negative \$43 million fund balance. Our liability fund has a negative \$5 million fund balance.
- Our technology systems have not been replaced in a timely fashion. For example, our financial system is 21 years old, with an estimated replacement cost of \$10 million.

This level of cuts, while unheard of among California cities, was still not enough to avoid insolvency. To be truly sustainable, many of these prior cuts will have to be reinstated at some point. As emphasized in its AB506 restructuring proposal, the City must remain viable as a municipality by achieving a sustainable fiscal position and regain service solvency. Chapter 9 was the only possible option for creating a viable foundation to meet these goals. However, while the restructuring savings achievable only under Chapter 9 are vitally necessary, they are insufficient, even with all of the prior City budget cuts, to resolve the City's financial woes, without additional resources.

Bankruptcy Process

The City has experienced massive budget deficits for the past several years, owing to the economic collapse of the Central Valley economy during the Great Recession, an excessive debt burden amassed by the City since 2003, the granting of unsustainable labor contracts and retiree medical benefits, past financial miscalculations and the elimination by the state of redevelopment agencies. Even after implementing \$90 million of extraordinary service reductions, privatization measures and

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huge employee compensation reductions, the FY 2012-13 Budget faced a shortfall of \$26 million.

In February 2012 the City implemented budget corrections to retain a balanced budget through June 30, and started the AB506 mediation process in an effort to avoid bankruptcy. During the AB506 process some participants worked very hard to understand the City's financial status and many tried to reach agreements that would improve the City's unsustainable financial position. The City was required by its Charter and by state law to adopt a balanced budget by June 30, and so on June 26, 2012 the City closed its remaining deficit by approving the 2012-13 Pendency Plan. The Pendency Plan suspended debt payments, phased out all retiree medical benefits over one year, continued reductions of pay and benefits imposed under previous Declarations of Fiscal Emergency and reduced compensation components that exceeded those in the City's labor market to close the \$26 million gap.

The City's eligibility for bankruptcy was immediately challenged by a consortium of financial debt creditors consisting of Assured Guaranty, National Public Finance Guaranty and Franklin Funds, collectively known as the Capital Markets Creditors. While the eligibility issue was being litigated, the City's bankruptcy Judge, the Honorable Christopher Klein, ordered the City to mediate obligations in dispute and appointed Judge Elizabeth Perris to act as our Mediation Judge.

In mediation with Judge Perris, the hard work and good faith efforts of the City's labor team and labor groups begun in AB506 continued, resulting in six amended labor agreements by July 24, 2012. Another two agreements with labor were reached on August 28, 2012. Those agreements resulted in waiving claims to prior imposed pay and benefit reductions, achieving approximately 85% of the original AB506 ask with respect to future savings, and avoided further litigation costs between the labor groups and the City.

In March 2013 the City was able to negotiate a tentative agreement with Ambac relating to the 2003 Certificates of Participation debt obligation. This agreement was finalized in April 2013.

As mentioned above, the Capital Markets Creditors challenged the City's eligibility for bankruptcy, which consumed months of effort. This legal process culminated in Judge Klein's ruling on April 1, 2013 granting Stockton access to bankruptcy protection, in which he ruled that Stockton officials and financial experts had demonstrated the City was indeed insolvent on June 28, 2012, that it needed the muscle of Chapter 9 to maintain its viability and that the City had acted in good faith. Through this bankruptcy case the judge has made another important decision. He confirmed that the judiciary cannot tell the City Council how to run itself and spend its money. We believe this is an important decision that greatly reduces the risk of seeking more tax revenues before the judge actually rules on a bankruptcy Plan of Adjustment. Since then the City has continued to be engaged in mediation efforts with retirees, bond creditors and other claimants.

In June 2013 the City was able to reach a tentative agreement with one of the largest creditors in the bankruptcy, the Association of Retired Employees of the City of Stockton (approximately 1,100 retired individuals who had been promised lifetime medical insurance coverage at no cost for the

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retiree and a spouse). This agreement should be finalized in July 2013.

We also have a tentative agreement with the Marina Towers group.

We have continued to mediate with the remaining creditors which consist of

- The Capital Markets Creditors (Assured, NPFG and Franklin), which have five secured and one unsecured debt obligation between them
- Sports teams (the Stockton Thunder and Ports), which are both subsidized by the City
- Two legal settlements known as the Price and Jarvis matters
- The State of California Department of Boating and Waterways relative to loan funding for the Stockton Marina

Our schedule calls for submittal of a plan of adjustment in the third Quarter of 2013 which will set the stage for a final resolution via a litigated confirmation process. Once the plan is approved it becomes the basis for exiting bankruptcy. However, I do not think Stockton's recovery of much needed services should be held hostage to an unknown court schedule and creditor actions.

Bankruptcy presents a special challenge in the context of voter consideration of a new general tax measure. It introduces some uncertainty but because of the previously mentioned judge's decision we think it is a manageable risk. As I said earlier, neither the Court nor the creditors override the discretion of the elected City Council to determine the requirements for the municipal corporation and to make decisions about the allocation of the resources available. Stockton has been completely honest and transparent about the need to obtain additional general fund revenues for the purposes of addressing the critical public safety needs which exist and addressing the other critical needs of the City. We have shared this fact with creditors.

In addition, such revenues are necessary to allow the City to meet the requirements of the restructuring proposals which have been made in the AB506 process and bankruptcy mediation. Any plan of adjustment approved by the judge will be contingent on voter approval, anyways. Thus, voter approval of more resources makes for a stronger plan from the City. The Court has rebuffed efforts by the creditors to submit alternative spending proposals which are implicitly anchored in alternative public policy determinations, in order to substitute them for the considered determinations actually made by the elected City Council. Our proposal to submit a general tax measure for consideration is shaped by the fact that such a tax best meets the needs of the City and its citizens, and the settled law under Chapter 9. The City retains its ability to make the determinations about resource allocation which are fundamental to elected representative governance.

DEVELOPMENT OF MARSHALL PLAN TO IMPROVE PUBLIC SAFETY

In April 2012 the City initiated development of a Marshall Plan to reduce homicides and violence. This is a multi-generational chronic problem that has only gotten worse with a hard economy and reduced police staffing levels, as illustrated by the following points:

- The City of Stockton has the second highest total crime rate per capita for any city with a population of 100,000 or greater in California.
- While violent crime rates dropped 5.5% nationwide in 2010, they were up in Stockton, which ranked 10th in the entire U.S. with 13.81 violent crimes per 1,000 residents.
- Despite this high service demand, budget cuts have reduced sworn police staffing from 1.52 per 1,000 residents in 2005 to 1.17 currently (before addition of 17 grant-funded positions), which is the lowest ratio for cities over 250,000 population, notwithstanding our high crime rate.
- The City has a lower level of sworn police staffing than has been recommended by industry standards or which is observed in other similar service settings. The 2006 Braga study recommended sworn officer staffing levels at 2.0 per 1,000 residents, which even with the pending addition of 17 grant-funded officers, would require the addition of 240 police officers at a total annual cost (including equipment and support costs) of \$50 million when fully implemented in FY 2020-21.

As the Marshall Plan report endorsed by the City Council stated, violence is a learned and contagious behavior perpetrated by a relatively small number of individuals. There is no single solution to violence, and the Marshall Plan has engaged key stakeholders in the community and criminal justice system to develop workable strategies. This will require a significant financial commitment by the City in excess of \$20 million annually.

With five of the six City Council Town Hall Meetings concluded, the feedback has been cautiously supportive. The most common concern revolves around past Council decisions in the areas of employee compensation, retiree health and new business ventures (debt and operating subsidies). Other feedback on the Marshall Plan was consistent with what you heard at your Council meeting, e.g. we need additional employment opportunities and can we really impact the balance of the criminal justice system. On the topic of mistrust due to previous decisions, I will be submitting a tax proposal on July 9 that responds to these concerns.

Table 1 shows the projected cost by major element of the Marshall Plan, including additional sworn officers added over a three-year period, and staffing level relative to population. Officer costs include supervisory positions needed for an expanded force, vehicles, equipment and overtime. Salaries and benefits include projected future cost increases. Support positions include additional crime analysts and records assistants needed to service the increased number of officers and a small Office of Violence Reduction, whose sole focus will be to ensure the sustainability of the Marshall Plan goals. Operation Ceasefire (currently grant-funded) would be continued and Operation Peacekeepers would

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be expanded. Neighborhood improvement programs include expanded code enforcement and neighborhood “blitz” teams.

Table 1

	Projected Marshall Plan Cost Over General Fund Forecast									
(\$ in Millions)	<u>11-12</u>	<u>12-13</u>	<u>13-14</u>	<u>14-15</u>	<u>15-16</u>	<u>16-17</u>	<u>17-18</u>	<u>18-19</u>	<u>19-20</u>	<u>20-21</u>
New Officers	-	-	-	40	40	40	-	-	-	-
Total Sworn FTE	345	362	362	402	442	482	482	482	482	482
Est City Pop (000)	295.0	296.5	297.9	299.4	300.9	302.4	303.9	305.5	307.0	308.5
Sworn FTE/1000 Pop	1.17	1.22	1.22	1.34	1.47	1.59	1.59	1.58	1.57	1.56
Costs:										
New Officers	-	-	-	\$6.64	\$12.72	\$19.37	\$19.98	\$21.51	\$23.10	\$24.44
Support Staff	-	-	-	0.52	0.60	0.75	0.76	0.78	0.79	0.81
Violence Reduction Offi	-	-	-	0.25	0.26	0.26	0.27	0.27	0.28	0.28
Ceasefire/Peacekeepers	-	-	-	0.61	0.63	0.64	0.65	0.66	0.68	0.69
Neighborhood Imprvmt	-	-	-	1.31	0.71	0.52	0.53	0.54	0.55	0.56
Total Cost	-	-	-	9.33	14.91	21.53	22.18	23.76	25.40	26.78

TRANSACTIONS AND USE TAX TO FUND THE MARSHALL PLAN AND OTHER CRITICAL NEEDS

In fall 2012 the City polled likely voters to assess attitudes toward a potential ballot measure to enact an additional local sales tax rate. In January 2013, Mayor Silva proposed a special tax initiative devoted to public safety. On April 2 the City Council discussed that proposal and concerns about harming our bankruptcy efforts and exacerbating the general fund’s financial condition. The Council directed me to facilitate town hall meetings on the Marshall Plan and return with a funding proposal for it. Following discussions with business leaders the City was urged to bring forward a general tax proposal that would both balance the general fund budget and fund the Marshall Plan for improved public safety, which will be the measure before you on July 9.

A local sales tax, technically known as a transactions and use tax, requires voter approval. Normally, a general tax requiring majority voter approval must appear on a municipal ballot along with council elections. The next Stockton municipal ballot does not occur until June 2014, which is too long to wait given the City’s dire financial condition and the need to begin recovery. However, pursuant to Section 2(b) of Article XIII C of the California Constitution, the City Council may, upon declaration of a fiscal emergency by a unanimous vote of the members of the Council present at the public hearing, submit the proposed transactions and use tax as a special election, in this case consolidating it with the county’s uniform district election of November 5, 2013.

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As shown by the magnitude of the budget cuts already enacted, the City is not in a position to absorb any more cuts. The only alternative to further reducing public services is additional tax revenue. The California Constitution requires voter approval for new taxes, and a number of other California cities have taken tax proposals to their residents in recent years. As reported by the California Local Government Finance Almanac, on the November 2012 statewide ballot a total of 48 of 60 city general tax (majority vote) measures were passed (80% approval rate), while 5 of 15 city special tax (two-thirds vote) measures passed (33.3% approval rate). As to local transactions and use tax measures specifically, 31 of 33 city general tax measures passed (93.9% approval rate) versus 1 of 3 city special tax measures (33.3% approval rate). This recent level of success of general taxes is significantly higher than the outcome for such measures since 1995, as shown in Table 2.

Table 2

City Transaction and Use Tax Measures (1995-2013)				
	<u>Passed</u>	<u>Failed</u>	<u>Total</u>	<u>% Passed</u>
General Tax	115	54	169	68.0%
Special Tax	27	28	55	49.1%
Total	142	82	224	63.4%

Table 3 breaks down the city transaction and use taxes currently in effect by level of tax rate. Section 7285.9 of the Revenue and Taxation Code provides that a city may levy a transactions and use tax in multiples of 0.125% provided all overlapping tax rates do not exceed 2.00%. No city in California has ever levied greater than a combined 1.00% local rate. There are 10 other cities that have two transaction and use tax rates, as would Stockton if this measure is enacted. Stockton has the 0.25% Measure W rate now, and adding 0.75% would go to the maximum any other city is charging. For competitive reasons, it would not be prudent to go in excess of this amount.

Table 3**Transaction and Use Taxes Currently in Effect**

	General	Special	
<u>Rate</u>	<u>Tax</u>	<u>Tax</u>	<u>Total</u>
0.250%	14	6	20
0.375%	1	0	1
0.500%	59	17	76
0.750%	6	2	8
1.000%	20	0	20
City Total	100	25	125
Other Agencies			39
Grand Total			164

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The City's poll of likely voters last fall showed an initial 71% support for a 0.75% general sales tax to "improve and maintain essential City services, which may include a community-wide plan, developed by local leaders and criminal justice experts, with strategies to reduce crime in Stockton, including expanding the police force, improving 9-1-1 emergency response services, increasing anti-gang and crime prevention programs, and other general services such as street repair, libraries and parks." After hearing both pro and con arguments the level of support moved to 68%. Alternatively, only 21% supported a measure whose proceeds "would primarily provide funding to pay existing debt holders, employee compensation and benefits, and city paid retiree medical benefits, but would not improve existing services or restore services that have previously been cut."

PROPOSED TAX

The proposed ballot measure language is currently being drafted and will be available during the normal publication of the July 9 City Council Agenda. The proposed new tax would be a 0.75% transaction and use tax (sales tax) that as a general tax requires a majority voter to enact. It is expected to produce approximately \$28 million in its first full year and grow at a rate of about 3.5% annually. Over a ten-year period approximately \$219 million would be used to fund the Marshall Plan, and approximately \$112 million would be used to fund the City's exit from bankruptcy. With a three-year phase-in to full additional police staffing, and the need to eliminate the remaining general fund shortfall and re-establish reserves at the outset, in the initial years a larger proportion of funds would be devoted to the Bankruptcy Recovery Plan. By year four and thereafter the added public safety services would require 70-75% of the additional tax revenues; over time the ratio is projected to be approximately 66% for Marshall Plan expenses and 34% for the Bankruptcy Recovery Plan and other services. Given the well documented poor practices of the past, I will be recommending very unique accountability measures in the tax ordinance that ameliorate the risks going forward.

Table 4 shows the recent and future changes in total sales tax rate applicable in Stockton, assuming implementation of a 0.75% transactions and use tax.

Table 4

Change in Total Sales Tax Rate in Stockton		
<u>Rate</u>	<u>Date</u>	<u>Action</u>
8.00%	1/1/12	Before Prop 30
8.25%	1/1/13	After Prop 30
9.00%	4/1/14	Approval of New Tax
8.75%	1/1/16	Prop 30 Expires

Table 5 compares the current and proposed level of total sales tax rate in Stockton to the current total rates applicable in surrounding jurisdictions.

Table 5
Surrounding Jurisdiction Tax Rates

9.000%	Lathrop
9.000%	Livermore
9.000%	Stockton (proposed)
8.625%	Fairfield
8.500%	Manteca
8.500%	Sacramento
8.500%	Tracy
8.250%	Stockton (current)
8.000%	Elk Grove
8.000%	Lodi
7.625%	Modesto

FINANCIAL SUMMARY

Revenue Generating Capacity

If the tax is approved on the November 5, 2013 ballot, it will take effect on April 1, 2014, and the City will accrue one quarter's worth of revenue (approximately \$6.8 million) for FY 2013-14, with full year collection starting in FY 2014-15 at approximately \$28 million annually.

A transaction and use tax may raise less (or more) than the equivalent rate of sales tax due to special provisions affecting vehicle sales and other transactions that are based on residency of the buyer, rather than location of the sale. HdL Companies, a sales tax consultant, summarizes the revenue effect as follows: "In projecting revenues, cities who serve a regional market for vehicles or merchandise to be delivered elsewhere such as contractor materials or industrial equipment and goods, will find that their transactions and use tax is proportionally lower than their sales tax revenues. A city whose residents and businesses must shop outside the city for vehicles and business and construction related goods, will find that their transactions and use tax receipts are proportionally higher than their sales tax revenues."

As a regional market, a transactions and use tax in Stockton would raise proportionately less than its sales tax revenue, which is the experience with the City's current 0.25% tax for public safety (Measure W), which generates around 94.6% of a comparable rate of sales tax. The revenue projected from the proposed 0.75% tax is based on the revenue-generating capacity of Measure W (i.e., three times the revenue collected from Measure W's 0.25% tax rate).

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Table 6 shows the projected use of the new tax proceeds between balancing the general fund budget (Bankruptcy Recovery Plan) and improving public safety services (Marshall Plan). Initially more proceeds are devoted to bankruptcy recovery, and then as Marshall Plan costs are fully phased in, more proceeds will be used to fund this improvement in public safety services. Over a ten-year period, it is estimated that safety services will consume approximately 66% of total tax proceeds, and balancing the general fund budget and emerging from bankruptcy will require approximately 34% of total tax proceeds.

Table 6

Projected Use of New Tax Revenue Over Ten Year Period											
(\$ in Millions)	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21	21-22	22-23	23-24
New Tax Revenue	\$6.9	\$28.4	\$29.4	\$30.4	\$31.5	\$32.7	\$33.8	\$35.0	\$36.2	\$37.5	\$29.1
Marshall Plan	-	\$9.3	\$14.9	\$21.5	\$22.2	\$23.8	\$25.4	\$26.8	\$27.0	\$27.5	\$21.0
% Annual Use of Tax	0%	33%	51%	71%	70%	73%	75%	77%	75%	73%	72%
% Cumulative Use	0%	26%	37%	48%	54%	58%	61%	63%	65%	66%	66%
Bankruptcy Recovery	\$6.9	\$19.1	\$14.5	\$8.9	\$9.4	\$8.9	\$8.4	\$8.2	\$9.2	\$10.0	\$8.1
% Annual Use of Tax	100%	67%	49%	29%	30%	27%	25%	23%	25%	27%	28%
% Cumulative Use	100%	74%	63%	52%	46%	42%	39%	37%	35%	34%	34%

General Fund Forecast

Unless this tax is approved by the voters, the City will continue to run shortfalls. Tables 7, 8 and 9 on the following pages are based on 2011-12 financial statements pending audit and 2012-13 projections as of your Quarter 2 Budget Report. Table 7 shows the annual general fund shortfall and ending fund balance after Chapter 9 restructuring savings, but without both the Marshall Plan and new tax revenue, over the City's 10-year forecast period; the annual shortfall ranges from \$8.6 million in FY 2013-14 to \$79.1 million by FY 2020-21, and deficits begin in FY 2014-15.

Table 7

Summary Forecast After Chapter 9 But No Marshall Plan and No New Tax										
(\$ in Millions)	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21
Total Revenue	\$160.3	\$156.8	\$159.5	\$161.5	\$165.5	\$171.1	\$176.0	\$181.1	\$186.3	\$190.1
Total Expenditures	166.8	156.9	159.5	170.1	177.0	179.1	186.0	192.9	200.7	204.9
Net Annual	(6.6)	(0.1)	-	(8.6)	(11.5)	(8.0)	(10.0)	(11.8)	(14.4)	(14.8)
Beginning Balance	6.6	0.1	-	-	(8.6)	(20.1)	(28.1)	(38.1)	(49.9)	(64.3)
Ending Balance	0.1	0.0	-	(8.6)	(20.1)	(28.1)	(38.1)	(49.9)	(64.3)	(79.1)
Bal as % of Total Exp	0.0%	0.0%	0.0%	-5.0%	-11.3%	-15.7%	-20.5%	-25.9%	-32.0%	-38.6%

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Table 8 shows the impact of adding the cost of the Marshall Plan to Chapter 9 savings, but without the new tax, which results in annual shortfalls \$17.9 in FY 2014-15 to \$223.0 million by FY 2020-21; the ending fund balance falls dramatically farther into deficit.

Table 8

	Summary Forecast After Chapter 9 With Marshall Plan But No New Tax									
(\$ in Millions)	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21
Total Revenue	\$160.3	\$156.8	\$159.5	\$161.5	\$165.5	\$171.1	\$176.0	\$181.1	\$186.3	\$190.1
Total Expenditures	166.8	156.9	159.5	179.4	191.9	200.6	208.2	216.7	226.1	231.7
Net Annual	(6.6)	(0.1)	-	(17.9)	(26.4)	(29.5)	(32.2)	(35.6)	(39.8)	(41.6)
Beginning Balance	6.6	0.1	-	-	(17.9)	(44.3)	(73.8)	(106.0)	(141.6)	(181.4)
Ending Balance	0.1	0.0	-	(17.9)	(44.3)	(73.8)	(106.0)	(141.6)	(181.4)	(223.0)
Bal as % of Total Exp	0.0%	0.0%	0.0%	-10.0%	-23.1%	-36.8%	-50.9%	-65.4%	-80.2%	-96.2%

Table 9 shows the impact of adding a 0.75% local sales tax, as well as the cost of the Marshall Plan and Chapter 9 savings, which results in a balanced budget throughout the forecast period, with reserve levels averaging approximately 8% for the period of FY 2013-14 through 2020-21. While the balance declines in the latter years of the City's 10-year forecast, beyond that forecast period the rate of decline slows in the mid-2020's and the general fund is projected to avoid going into deficit due largely to the expected long-term trend of pension costs.

CalPERS rates are projected to increase significantly through 2020 due to recently adopted rate smoothing and unfunded liability amortization policies, an expected further reduction in the discount rate (actuarial investment return), and other changes. However, the Public Employee Pension Reform Act (PEPRA) grants lower benefits to new employees, so savings will accrue over time with turnover in the workforce. Also, under the smoothing and amortization changes the City pays more in the near-term, but less later on. As a consequence of this restructuring, pension contribution rates as a percent of payroll will level off and then begin to decline, resulting in projected annual surpluses and increasing fund balance by the late 2020's. The City is projecting this rate of decline at a much more conservative rate than that discussed by CalPERS staff.

Table 9

Summary Forecast After Chapter 9 With Both Marshall Plan and New Tax										
(\$ in Millions)	11-12	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20	20-21
Total Revenue	\$160.3	\$156.8	\$166.4	\$190.1	\$195.3	\$202.0	\$208.0	\$214.2	\$220.5	\$225.3
Total Expenditures	166.8	156.9	159.5	179.4	191.9	200.6	208.2	216.7	226.1	231.7
Net Annual	(6.6)	(0.1)	6.9	10.8	3.4	1.3	(0.2)	(2.5)	(5.6)	(6.3)
Beginning Balance	6.6	0.1	-	6.9	17.6	21.0	22.3	22.2	19.7	14.0
Ending Balance	0.1	0.0	6.9	17.6	21.0	22.3	22.2	19.7	14.0	7.7
Bal as % of Total Exp	0.0%	0.0%	4.3%	9.8%	11.0%	11.1%	10.6%	9.1%	6.2%	3.3%

ALTERNATIVE TO NEW TAX REVENUE IS ADDITIONAL BUDGET CUTS

The alternative to enacting a new tax is to make additional reductions in service levels. Otherwise, the City cannot present a viable Plan of Adjustment for exiting bankruptcy.

- Balancing the general fund budget without both the Marshall Plan and new tax would require a 7% reduction in the total general fund expenditures remaining after Chapter 9 restructuring. This would generate approximately \$11 million in savings when fully implemented in FY 2014-15 (half that amount in FY 2013-14 by the time cuts could be started), with growth in the value of the avoided costs over time.
- Balancing the general fund budget with the Marshall Plan but no new tax would require a 15% reduction in total general fund expenditures remaining after Chapter 9 restructuring, which would generate approximately \$26 million in savings when fully implemented in FY 2014-15 (half that amount in FY 2013-14 by the time cuts could be started), with growth in the value of the avoided costs over time.

Additional budget cuts in this range of \$11-26 million, especially if the weight of cuts were borne by non-safety services, would seriously undermine the long-term viability of Stockton. Even if the Marshall Plan is adopted, the City's viability is not determined by public safety services alone. As important as is public safety, citizens and businesses don't move to or stay in a city solely on the basis of police services. Parks, libraries, recreation and/or entertainment opportunities, schools, employment opportunities, reputation, sense of safety, predictability and lifestyle are all part of a city's long-term viability.

Table 10 shows the type of budget cuts that might be required in the absence of new tax revenue. These items were on a contingent cut list from the FY 2011-12 budget and total \$22 million. This is more than enough to balance the general fund budget without the Marshall Plan, or just enough to

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balance the budget while funding about 75% of the Marshall Plan.

Table 10

**Example of \$22 Million in Additional Cuts That Might Be Required in the Absense
New Tax Revenue Based on Contingent Departmental Cut List from 2011-12 Budget (**

<u>Non-Safety:</u>		<u>Fire:</u>	
Admin, CC, Non-Dept-cut 5 FTE	\$354	Truck 2-cut 1 FF/sh	\$405
Admin Svc-cut 9 FTE	442	Truck 3-cut 1 FF/sh	405
Auditor-15% reduction	65	Truck 7-cut 1 FF/sh	405
City Atty-cut 1 advisory atty	126	Close Engine 6	1,351
City Clerk-cut 1 FTE	79	Close Engine 11	1,351
Econ Dev-15% reduction	103	Close Engine 14	1,351
Ent Venue-reduce maint/other	244	Close Truck 3	1,351
Ent Venue-close ballpark	366	Other savings	65
Develop Svcs-elim GF subsidy	1,000	Reduced Fire Dist reimburse	(662)
Golf-close Van Buskirk	250	Subtotal Fire Dept	<u>6,022</u>
CIP-cut GF funding	575		
HR-reduce training	80	<u>Police:</u>	
HR-cut 3 FTE	184	Cut 30 CSOs (net of rev loss)	1,751
Library-cut 7 FTE/31% fewer hrs	500	Records staff cut 3 FTE	199
Library-cut landscaping 50%	10	Telecommunication cut 3 FTE	267
Rec-cut 3 FT/3 PT	242	Investig/traffic/other cut 14 FTE	1,139
Rec-after school reduction	48	Traffic section cut 12 FTE	1,368
Peacekeepers-cut GF 15%	27	Investig cut 21 FTE (6 left)	2,543
PW-park maint to min levels	185	Patrol cut 31 FTE	<u>3,727</u>
PW-cut water use 50%	165	Subtotal Police Dept	<u>10,994</u>
PW-cut 1 FTE, fund shift to Gas	170		
Subtotal Non-Safety Depts	<u>5,214</u>	Grand Total Cuts	<u>22,230</u>

It would be difficult, however, to implement the Marshall Plan while simultaneously cutting other key elements of the Police Department. Table 11 shows that if the \$11 million in Police cuts were spread to other departments, the percentage impact jumps to unsustainable levels: if both Police and Fire were held harmless from cuts of this magnitude, non-safety would suffer a 54% reduction in budget levels.

Table 11

Sample Impact Assuming Re-Allocation of Contingent Cut List Among Safety and Non-Safety Departments (\$ in 000)				
(\$ in 000)	Other <u>Depts</u>	Fire <u>Dept</u>	Police <u>Dept</u>	<u>Totals</u>
Cuts from Contingent List	\$5,214	\$6,022	\$10,994	\$22,230
% Cut (13-14 dollars)	13%	17%	13%	
No Cuts to Police	11,125	11,105	-	\$22,230
% Cut (13-14 dollars)	27%	31%	0%	
No Cuts to Police+Fire	22,230	-	-	\$22,230
% Cut (13-14 dollars)	54%	0%	0%	

These impacts are limited to the \$22 million value of the cuts on the existing list. Cutting the entire \$26 million needed to both balance the budget and fund the full Marshall Plan, without affecting the Police and Fire departments, would boost the cuts to the remaining non-safety departments from 54% to 62%. All of this comes on top of previously implemented cuts totaling 36% of total general fund expenditures. Even if none of these cuts came from the Police Department, this action would be like building a structure on a crumbling foundation. It would be difficult, if not impossible, to run the entire City without the administrative, planning, financial and other support functions that would be largely eliminated through an effort to balance the general fund budget, and pay for the Marshall Plan, without any additional resources.

CONCLUSION

It is recommended that the City Council call for a public hearing for July 9 and consider placing a tax measure before the voters for approval on November 5, 2013. On July 9 it will be recommended that the Council adopt the Resolution calling the election, and approve the Ordinance establishing the terms and conditions of a sales tax for consideration by the voters. First reading of the ordinance is done by Council and under state law the second reading is the action by voters at the election.

News

TAXPAYERS GROUP WANTS IN ON TALKS CITY MANAGER DISMISSES REQUEST FROM 'WANNABES'

By **Scott Smith**
July 02, 2013
Record Staff Writer

STOCKTON - A group of five residents not convinced that administrators at City Hall have the community's best interest at heart will ask the court to be part of Stockton's confidential bankruptcy mediation.

City Manager Bob Deis on Monday said the city vowed to "vigorously oppose" the move mounted by a "fringe group" trying to usurp the role of the elected council members.

The Taxpayers Working Group seeks standing in bankruptcy court to represent residents and communicate to them the complexities of Chapter 9, said the group's attorney, Karol Denniston of Schiff Hardin LLP in San Francisco.

"The Working Group does not intend nor expect to be a disruptive force," Denniston said. "Appointment of an official taxpayer committee will ensure that taxpayers are well represented and able to fully participate."

She said the group, if granted committee status, will function similarly to a committee of retired city employees that spoke on behalf of the larger group.

Former Councilman Dale Fritchen and David Renison, president of the San Joaquin County Taxpayers Association, head up the Working Group, which first met June 5.

Others named in court filings are: Larry Solari, a shareholder at Croce & Company Accountancy Corporation; Robert French, president of Western Truck Stops; and financial consultant James DiSerio. Other remain unnamed.

For her part, Denniston drafted the legislation requiring a municipality undergo pre-bankruptcy called AB506. Stockton was the first and only California city do that before filing June 28, 2012.

The Working Group was drawn to action by Deis' recent presentation of a 3/4-cent sales tax proposal, which he said is key to Stockton's strategy for exiting bankruptcy and bolster police services.

The City Council is expected to vote July 9 on whether to put the measure on the ballot for a citywide vote at the year's end.

Yet, the Working Group contends that the public has too few specifics assuring residents the general, unrestricted tax will be spent on public safety as officials portray, Denniston said, citing a lack of transparency.

She noted that Deis and city administrators are members of the California Public Employees' Retirement System, which makes their impartiality in navigating the city's bankruptcy "difficult if not impossible."

Denniston would not say if the Working Group sought to draw CalPERS into the bankruptcy case. She said the shortage of information prevents the taxpayers from knowing what questions to start asking.

In addition to blocking the group, Deis said it is made up of political "has-beens and wannabes" represented by an attorney desperate for a piece of the municipal bankruptcy frenzy.

"This is, in my opinion, an attorney that has no background in Chapter 9 and has been seeking a client for some time," Deis said. "They found people that wish they were on the City Council, but are not."

In last year's election, Fritchen lost his City Council seat to Councilman Michael Tubbs, and Renison, in 2009, vied for a council appointment ultimately given to Councilman Elbert Holman.

Exhibit E

"If one wants to be a policymaker, they have to be dually elected by citizens of this community," Deis said.

"They've been unable to do that. This is a back door way of doing that."

Deis also dismissed the charge that he or other city administrators have a conflict of interest over their membership in CalPERS. The judge rebuffed that argument first made by Wall Street creditors, Deis said, and council members ultimately call the shots.

Contact reporter Scott Smith at (209) 546-8296 or ssmith@recordnet.com. Visit his blog at recordnet.com/smithblog.